

REGULATING THE MAINTENANCE OF ABANDONED, FORECLOSING AND FORECLOSED RESIDENTIAL PROPERTIES.

CITY OF FITCHBURG BOARD OF HEALTH

1. Authority and Scope: It is the intent of these regulations to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring all Property Owners, including lenders, trustees, and service companies, to properly maintain Abandoned and/or Foreclosing properties (ii) regulating the maintenance of Abandoned and/or foreclosing, properties to prevent blighted and properties that are not Secured against the entry of vandals and vagrants. The Director of Public Health or his designee has enforcement authority pursuant to M.G.L. c. 111, s. 127a, the Massachusetts State Sanitary Code and the Code of the City of Fitchburg. The Board of Health promulgates these regulations to protect the health, safety and welfare of all residents and the general welfare of the public pursuant to G.L.c.111, §§ 31, 122-125 and 127A and pursuant the Home Rule Amendment to the Constitution of the Commonwealth.

2. Effective Date: June 1, 2012

3. Definitions:

Abandoned Building: (1) a vacant building, the ownership responsibilities of which have been surrendered or relinquished, whether intentionally or by failure to occupy and maintain such property; or (2) buildings, structures and premises for which the owner cannot be identified or located by delivery of certified mail at the last known or registered address, which persistently or repeatedly becomes unprotected or unsecured or, which is or has been occupied by unauthorized persons.

City: means the City of Fitchburg, Massachusetts.

Days: mean consecutive calendar days.

Director: means the Director of Public Health or his designee

Evidence of vacancy: means any condition that would lead a reasonable person to believe that the property is vacant or abandoned.

Foreclosing/Foreclosure/Foreclosed: means the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

“Initiation of the foreclosure process”: means taking any of the following actions: (i) taking possession of a residential property pursuant to M.G.L. c.244, s. 1; (ii) publishing the first foreclosure notice of a residential property pursuant to

M.G.L. c. 244, s. 14; or (iii) commencing a foreclosure action on a residential property.

Local: means within twenty (20) driving miles distance of the property identified as abandoned, vacant, foreclosed or in the initiation of the foreclosure process.

Maintain or Maintained Forthwith: means maintained in accordance with the Massachusetts State Sanitary Code, Massachusetts State Building Code, and City Ordinances and Regulations. A dwelling not Secured which allows the entry of unauthorized persons is considered a dwelling which is not Maintained according to this regulation.

Mortgagee: means the creditor, including but not limited to, service companies and lenders, in a mortgage agreement, or any successor in interest and/or assignee of the mortgagee's right, interest or obligation under the mortgage agreement.

Property Owner: means every person, entity, service company, property manager or realtor, who alone or severally with others:

- 1) Has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- 2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, trustee or guardian of the estate of the holder of legal title; or
- 3) Is a mortgagee in possession of any such property; or
- 4) Is an agent, trustee or other person appointed by the owner or the courts and vested with possession or control of any such property; or
- 5) Is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner.
- 6) Owner also means every person who operates a Rooming /Lodging House; or
- 7) Is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

Property: means any real, residential property or portion thereof, located in the City, including all buildings or structures situated on the property. For the purpose of this regulation property does not include property owned by or subject to the control of the City or any of its governmental bodies.

Secure/ Secured or Securing: means those measures that assist in making the property inaccessible to unauthorized persons which prevents unlawful entry or access to a dwelling or structure which conforms with the State Building and Fire Codes, including but not limited to:

1. Removal all material determined by the Director of Public Health, the Fire Chief, or Building Commissioner or their designee(s) to be dangerous in case of fire.
2. Securing and Maintaining Secure all floors accessible from grade utilizing one of the following methods so long as such method is approved by the Director of Public Health, Building Commissioner and the Fire Chief:
 - a. Secure all openings including but not limited to windows and door opening in accordance with the U.S. Fire Administration, National Arson Prevention Initiative Board up Procedure, continuously until such time as the building is reoccupied; or
 - b. Provide twenty (24) hour watchman services continuously until such time building is reoccupied; or
 - c. Provide a monitored intruder alarm system at the perimeter of all floors accessible from grade continuously until such time as the building is reoccupied. Property owner shall notify the Director of Public Health, the Building Commissioner, the Police and Fire Chief that this method has been chosen to secure the building.
3. Maintain any existing fire alarms or sprinkler system unless written approval is obtained from the Fire Chief in accordance with MGL c. 148, section 27A to shut-off or disconnect said alarms or system.
4. Maintain utilities or submit a written plan detailing how the building will be maintained as a result of lack of utilities:
 - a. Plans should include but are not limited to: the prevention of all plumbing and sprinkler system freezing, and or any other systems within the dwelling which is designed to maintain protection to the building. Plans require written approval of the Director of Public Health, Building Commissioner and Fire Chief or their designees.

Vacant: any unoccupied real property which is empty or remains empty due to abandonment and is not continuously maintained by occupants having legal custody or legal right of entry to said property and which persistently or repeatedly becomes unprotected or unsecured or, which is or has been occupied by unauthorized persons.

4. Registration of Abandoned, Vacant, and/or Foreclosed or Foreclosing Properties Duty to Provide Written Notice of Abandoned Property and/or Mortgage Foreclosure:

- a. All Property Owners must register Abandoned, Vacant and/or Foreclosed or Foreclosing properties with the Board of Health or their designee on forms provided within (30) thirty days;
- b. All Property owners must take steps necessary to Secure Vacant and/or Abandoned dwellings immediately or within a reasonable timeframe forthwith.
- c. All registration must state the individual Property Owner(s) or agent(s) phone number and mailing address located within the Commonwealth as required by M.G.L. c. 59, s. 57D, M.G.L. c. 156D, s. 5.02, and 950 CMR 113.20 and the State Sanitary Code. The mailing address may not be a P.O. Box unless a street address is provided.
- d. This registration must also certify that the property was inspected by the Property Owners and Director of Public Health or his designee.
- e. If the property is Abandoned and Vacant, the registration must designate a Local individual or Local property manager or management company capable and responsible for the Security and Maintenance of the Property according this regulation, to the standards of Chapter 138 of the City Code and all other applicable codes and regulations Federal, State and City.
This designation must state the individual or company's name, phone number, and local mailing address. The mailing address may not be a P.O. Box., unless a street number is provided.
- f. All property registrations are valid for one year and expire on December 31 of each year.
- g. An annual registration fee of one-hundred dollars and (\$100.00) must accompany the registration form. The fee and registration are valid for the calendar year, or remaining portion of the calendar year in which the registration was initially required. Subsequent registrations and fees are due the first week of January of each year and must certify whether the foreclosing and/or foreclosed property remains Abandoned, Vacant or otherwise.
- h. To remove the Abandoned, Vacant or Foreclosure status in which the property no longer needs to register with the Board of Health; shall be determined by the Director of Public Health or his designee. Any disputes are subject to a hearing before the Board of Health or its designee at the request of the applicant and/or owner.

5. Additional Maintenance Requirements:

- a. The Local Property Owner or Local property Management Company must inspect and maintain the property on an as needed basis or at least weekly for the duration of the Vacancy/Abandonment of Foreclosure or Foreclosing Process.
 - b. The property must contain a posting which is constructed of durable, weather-resistant material and which is no less than 20 square inches in size listing with the name and 24-hour contact phone number of the Local individual or property manager or Management Company responsible for the Maintenance of the property. This sign must be posted on the front of the property so it is clearly visible from the street where applicable and must be affixed to the building in a secure manner designed to withstand normal weather conditions. The sign must comply with all City Building Codes and Zoning regulations.
 - c. The Property must have “No Trespassing” signs clearly posted to prevent unauthorized persons from gaining access to the property and which will allow law enforcement to arrest or remove unauthorized persons from the property. The sign must comply with City Building and Zoning regulations.
 - d. Adherence to this section does not relieve the property owner of any applicable obligations set forth in Federal, State or City Ordinances, Codes and Regulations.
- 6. Inspections:** The Director of Public Health or designee(s) shall have the authority to schedule periodic inspections of properties subject to this regulation for compliance and to issue citations for any violations. The Director of Public Health or his designee shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure that the Property is Maintained according to this regulation and/or any applicable regulations and standards.

7. Enforcement and Penalties:

- a. Failure to register with the Board of Health within 30 days is punishable by a fine of one hundred dollars (\$100.00) and shall be further subject to a one hundred dollar (\$100.00) fine for each week the property remains unregistered. Each day the property remains in violation constitutes a separate offense.
- b. If applicable, failure to properly identify the name of the Local Property Manager, Agent or Property Management Company is punishable by a fine of one hundred dollars (\$100.00) each week the property remains without a Local Property Manager or Agent. Each day the property remains in violation constitutes a separate offense.

- c. Failure to Maintain the property is punishable by a fine up to one hundred dollars (\$100.00) for each week the property is not Maintained. Violations of this section shall be treated as a strict liability offense regardless of intent. Fines shall be recoverable by indictment or on complaints before a District Court, or by noncriminal disposition in accordance with M.G.L. c. 40 s. 21D.
- d. Additionally, if a property is not registered as called for herein, the Director of the Board of Health, or his designee, shall have the right to file an action to enforce this regulation in the Worcester County Housing Court or any other court of competent jurisdiction, and shall require the owner(s) as defined herein to register forthwith, and further shall require the owner(s) to disclose the name and address of the casualty loss insurer insuring the premises, and shall be required to provide proof that there is insurance, bond or letter of credit in such sufficient amount to cover demolition of the property in the event a fire or other conditions requires the demolition of the property.
- e. All invoices for the payment of municipal charges and bills, fines or violations are due under any provision of this regulation or arising in connection with enforcing the regulation within 21 days after they are mailed unless a different due date is otherwise provided by law or regulation. Any invoice remaining unpaid after its due date will accrue interest from the due date at the rate of interest charged on tax bills under the provisions of General Laws, Chapter fifty-nine, section 57 as the same may from time to time be amended.
- f. The fees and charges assessed under this regulation, together with interest thereon and costs relative thereto, shall be a lien upon the real estate as described in G.L.c. 40, section 58. The lien shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds and, if a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under G.L.c. 59, section 53 the enforcing authority in charge of collecting the charge or fee, or the collector of taxes shall certify charge or fee to the assessors, who shall forthwith add the charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.
- g. If the property to which such charge or fee relates is tax exempt, the charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

- h. Upon the neglect or violation any duty imposed by this ordinance, that duty may be performed by the enforcing authority at the expense of the person charged with the duty. The City may recover its expenses, not exceeding the penalty, in a legal action of contract.

8. Appeal: Any person aggrieved by the requirements of this regulation or by a decision issued under this section by the Board of Health or their designee may seek relief by requesting a hearing, in writing before the Board of Health or in any court of competent jurisdiction in accordance with laws of the Commonwealth.

9. Interpretation:

(a) If any provision of this section imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy then the provisions of this section control.

(b) Each section, each provision or requirement of any section of this regulation shall be considered separable. If any section, subsection, sentence, clause, phrase or portion of this regulation is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

(c) Nothing in this regulation is intended to, nor shall it be construed to, diminish or limit the powers, authorities and duties of the Board of Health.

10. Regulatory Authority: The Director of Public Health or his designee has the authority to promulgate rules and regulations necessary to implement and enforce this regulation. The City has the right to petition the Housing Court or any other court of competent jurisdiction for enforcement of this regulation.

11. Applicability and Severability: If any provision of this section imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy then the provisions of this section control. If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

12. Implementation: Adoption of regulations is pursuant to MGL Chapter 111, Section 31, requiring a majority vote of the Board and publication in a local newspaper. The provisions of this section are effective upon adoption of this regulation. The guidelines of and all provisions shall be enforced immediately after the required publication period, but no monetary fine shall be imposed pursuant hereto until ninety (90) days after passage.

Sent to Publication by Unanimous vote of the Board of Health this 18th day of May 2012.